

**EXHIBIT 52**

Picard v. Merkin

Victor Teicher 10-29-13

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10:27:49

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In Re:

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,  
Debtor.

Adv.Pro.No.  
08-01789 (BRL)

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IRVING H. PICARD, Trustee for the  
Liquidation of Bernard L. Madoff  
Investment Securities LLC,  
Plaintiff,

Adv.Pro.No.  
09-1182 (BRL)

v.

J. EZRA MERKIN, GABRIEL CAPITAL,  
L.P., ARIEL FUND LTD., ASCOT  
PARTNERS, L.P., GABRIEL CAPITAL  
CORPORATION,

Defendants.

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VIDEOTAPED DEPOSITION of VICTOR TEICHER, as  
reported by NANCY MAHONEY, Certified Court Reporter,  
RPR, CLR and Notary Public of the States of New York  
and New Jersey, at the offices of BAKER HOSTETLER,  
45 Rockefeller Plaza, New York, New York on Tuesday,  
October 29, 2013, commencing at 10:50 a.m.

11:44:26 1 way or another.

11:44:26 2 Q. Do you recall in your prior testimony  
11:44:29 3 that you discussed conversations with Mr. Merkin  
11:44:31 4 regarding the consistency of Mr. Madoff's returns?

11:44:33 5 A. Yes.

11:44:34 6 Q. Do you recall you testified that you  
11:44:37 7 believe Mr. Madoff's returns were consistent?

11:44:39 8 A. Yes, were excessively consistent.

11:44:41 9 Q. And what did you mean by that?

11:44:43 10 A. Well, basically that if you looked at  
11:44:47 11 the returns and you looked at the standard deviation  
11:44:49 12 of the returns, it was -- resulted in a very high  
11:44:54 13 Sharpe ratio. I mean, we might -- I don't recall  
11:44:57 14 speaking with Ezra about the -- the Sharpe ratio of  
11:45:00 15 those returns, but there was very, very little  
11:45:03 16 volatility to those returns and -- from one year to  
11:45:08 17 the next. And my recollection is it wasn't much  
11:45:12 18 volatility from one month to the next.

11:45:20 19 Q. In discussing this with -- with  
11:45:24 20 Mr. Merkin, the consistency of Mr. Madoff's returns,  
11:45:27 21 did you consider that -- his returns to be  
11:45:29 22 materially different from the consistency of your  
11:45:32 23 own returns?

11:45:32 24 MS. PEERCE: Objection to form.

11:45:33 25 MR. STEINER: Object to the form.

11:45:38 1 A. I considered them to be materially  
11:45:40 2 different from the consistency of anyone's returns.

11:45:42 3 Q. How so?

11:45:47 4 A. How so?

11:45:48 5 Q. Yes.

11:45:50 6 A. Well, no one -- I don't know of  
11:45:56 7 anyone who has returns that are -- pretty much don't  
11:46:01 8 vary from one month to -- to another; and  
11:46:04 9 particularly year over year, the returns are fairly  
11:46:08 10 consistent one year to the next.

11:46:18 11 Q. In discussing the consistency of  
11:46:33 12 Mr. Madoff's returns, you just mentioned a term  
11:46:35 13 "Sharpe ratio." What is that?

11:46:37 14 A. That is the -- the return divided by  
11:46:42 15 the standard deviation of the return.

11:46:48 16 Q. Do you recall any discussions with  
11:46:50 17 Mr. Merkin regarding the Sharpe ratio?

11:46:53 18 A. No, I don't think he and I discussed  
11:46:55 19 that.

11:46:56 20 Q. In general, not specifically in  
11:46:58 21 regards to Mr. Madoff's returns?

11:46:59 22 A. No, I don't think so.

11:47:01 23 MS. PEERCE: Object to the form.

11:47:17 24 Q. Do you recall considering the Sharpe  
11:47:22 25 ratio when you had those discussions with

02:06:02 1 conversations did you have?

02:06:03 2 A. I -- I recall we had a conversa --  
02:06:04 3 had several conversations about it and -- we had  
02:06:11 4 several conversations about it. I mean, what --  
02:06:13 5 what's the sum and substance? I thought it was a --  
02:06:18 6 that the -- that the Madoff track record didn't  
02:06:25 7 sound right, didn't smell right.

02:06:27 8 Q. So you remember that conversation in  
02:06:29 9 which --

02:06:30 10 A. I don't remember the specific  
02:06:31 11 conversation. I remember the -- conceptually the  
02:06:34 12 conversation.

02:06:34 13 Q. Do you remember where those  
02:06:35 14 conversations took place?

02:06:40 15 A. My recollection is in the office.

02:06:44 16 Q. Do you recall if anyone else was  
02:06:46 17 present for any of those conversations, other than  
02:06:49 18 yourself and Mr. Merkin?

02:06:52 19 A. Perhaps Mike Autera was there,  
02:06:55 20 perhaps not.

02:06:55 21 Q. Is it possible that Jack Mayer was  
02:06:57 22 also there?

02:06:58 23 A. Possible.

02:06:59 24 Q. He was in the same office, correct?

02:07:01 25 A. Yes, the same premises, yes.

02:18:13 1 another, but he was sufficiently reliable.

02:18:15 2 Q. Did you find him to be honest?

02:18:18 3 A. Impeccably.

02:18:29 4 Q. Do you recall any discussions between  
02:18:30 5 yourself and Mr. Merkin at which Mr. Mayer was  
02:18:33 6 present in which you discussed the possibility that  
02:18:35 7 Mr. Madoff could be a fraud?

02:18:40 8 A. I don't have any specific  
02:18:42 9 recollection of a conversation like that, but it  
02:18:46 10 wouldn't surprise me if a conversation like that  
02:18:48 11 happened.

02:18:50 12 Q. Would you give the same answer if I  
02:18:53 13 asked about a conversation in which it was discussed  
02:18:55 14 whether or not Mr. Madoff could be running a Ponzi  
02:18:58 15 scheme?

02:18:59 16 A. I don't recall that the issue of  
02:19:02 17 Ponzi scheme ever came up.

02:19:04 18 Q. But the possibility of fraud may have  
02:19:06 19 come up?

02:19:17 20 A. Yeah, the possibility that it wasn't  
02:19:19 21 what it seemed to be.

02:19:20 22 Q. Are you -- are you aware that within  
02:19:21 23 this action, Mr. Mayer has provided testimony saying  
02:19:25 24 that he was present at a conversation in which you  
02:19:28 25 told Mr. Merkin that Madoff and BLMIS could be a

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03:19:35 1 pulled from the docket from the Supreme Court of the  
03:19:39 2 State of New York for this particular case. We're  
03:19:43 3 not sure that there's any differences between this  
03:19:46 4 and the version that was produced to us by the Ariel  
03:19:49 5 and Gabriel receiver, but if there is, we thought it  
03:19:51 6 best to introduce both of these.

03:19:55 7 MR. KITCHEN: So I'll mark -- I'll  
03:19:55 8 mark that with the next deposition exhibit.

9 THE REPORTER: 173.

03:20:10 10 MR. KITCHEN: 173.

03:20:12 11 (Deposition Trustee Exhibit 173  
03:20:19 12 marked for identification.)

03:20:19 13 BY MR. KITCHEN:

03:20:20 14 Q. Ask you to look at that and,  
03:20:21 15 realizing you can't read every word of it right now,  
03:20:24 16 answer whether or not it appears to be the testimony  
03:20:27 17 you provided in 2009?

03:20:29 18 A. Yes, it does.

03:20:32 19 MR. KITCHEN: With that, then I have  
03:20:35 20 no further questions.

03:20:36 21 MR. MENNITT: We will reserve our  
03:20:38 22 questions.

03:20:43 23 THE VIDEOGRAPHER: Off the record,  
03:20:44 24 3:22.

25 (Deposition concluded.)